PETITION OF

ADELPHIA COMMUNICATIONS
    CORPORATION   CASE NO. PUE-2002-00488

For application of § 56-466.1
of the Code of Virginia to pole
attachment practices of
Northern Virginia Electric
Cooperative

REPORT OF ALEXANDER F. SKIRPAN, JR., HEARING EXAMINER

January 27, 2003

On September 11, 2002, Adelphia Communications Corporation ("Adelphia") filed a Petition with the State Corporation Commission ("Commission") against Northern Virginia Electric Cooperative ("NOVEC"). In its Petition, Adelphia seeks the Commission's intervention in failed pole attachment rate negotiations with NOVEC. On November 7, 2002, the Commission issued its Order Establishing Proceeding, in which the Commission assigned the matter to a Hearing Examiner and directed the Examiner to issue a ruling establishing an expeditious procedural schedule. In addition, the Commission directed the Hearing Examiner to submit a report and recommendations that address: (i) the applicability of § 56-6 of the Code of Virginia, including Adelphia's standing to invoke the Commission's jurisdiction thereunder; (ii) findings of fact regarding NOVEC's compliance with § 56-466.1 B; (iii) the applicability of the provisions of § 56-466.1, including § 56-466.1 C, as it relates to Adelphia's Petition; (iv) remedies, if any, available to the Commission; (v) recommended remedies, if any; and (vi) other findings and recommendations as warrented.

A Hearing Examiner's Ruling, dated November 13, 2002, established a procedural schedule for this matter and scheduled the matter for hearing on January 7, 2003.

On November 26, 2002, and again on December 31, 2002, Adelphia filed unopposed motions for extension of time wherein counsel for Adelphia requested extensions of the procedural schedule to provide the parties an opportunity to complete a settlement agreement. These motions were granted in Hearing Examiner Rulings dated November 27, 2002, and January 2, 2003.

On January 24, 2003, Adelphia file a Motion for Dismissal of Action by Nonsuit ("Motion"). Adelphia indicates it has reached a full and complete settlement of all claims regarding the rates, terms, and conditions for Adelphia's attachments to NOVEC's facilities that were the subject of Adelphia's Petition. Therefore, Adelphia requests that the Commission dismiss its Petition by nonsuit. Adelphia asserts that § 8.01-380 of the Virginia Code allows a party to nonsuit "as a mater of right." Adelphia further supports its Motion by asserting that dismissal of the Petition will give effect to the negotiated settlement of the dispute, which will

serve the public interest by permitting Adelphia to continue providing service using NOVEC's facilities and will conserve the Commission's administrative resources.

Based on the pleadings, and upon § 8.01-380 A and B of the Virginia Code, I find that the Motion should be granted. In addition, I find that the hearing for this matter, scheduled to begin on February 18, 2003, should be canceled. Accordingly, , *I RECOMMEND* the Commission enter an order that:

1. *ADOPTS* the findings of this Report; and

2. *DISMISSES* this case from the Commission's docket of active cases and passes the papers herein to the file for ended causes.

COMMENTS

The parties are advised that pursuant to Rule 5 VAC 5-20-120 C of the Commission's Rules of Practice and Procedure, any comments to this Report on Remand must be filed with the Clerk of the Commission in writing, in an original and fifteen copies, within twenty-one days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P. O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of such document that copies have been mailed or delivered to all other counsel of record and to any party not represented by counsel.

Respectfully submitted,

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Alexander F. Skirpan, Jr.
Hearing Examiner